

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038
Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.	Application 00-11-056
Petition of The Utility Reform Network for Modification of Resolution E-3527.	Application 00-10-028

**ADMINISTRATIVE LAW JUDGE’S RULING ESTABLISHING
A SCHEDULE FOR CONSIDERATION OF THE PROPOSED
RATE AGREEMENT BETWEEN THE COMMISSION AND THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

This ruling establishes a schedule for the Commission to consider a proposed Rate Agreement between the Commission and the California Department of Water Resources (DWR). The Commission and DWR are authorized to enter into the Rate Agreement pursuant to Water Code § 80110 and § 80130.¹ A copy of the proposed Rate Agreement is contained in Exhibit A appended to this ruling. A summary of the Agreement is contained in Exhibit B.

¹ Water Code § 80110 and § 80130 were enacted as part of Assembly Bill No. 1 from the First Extraordinary Session, as modified by Senate Bill No. 31 from the First Extraordinary Session (referred to collectively hereafter as “the Act”).

The purpose of the proposed Rate Agreement is to facilitate the issuance of Bonds by DWR. Among other things, DWR will use the Bond proceeds to (1) repay the State of California for billions of dollars that the State spent to procure electric power in response to the electricity crisis, and (2) repay a \$4.3 billion “Interim Loan” that DWR used to finance power purchases. It is imperative that both the State and the Interim Loan be repaid without delay, since the State currently faces a massive budget deficit that threatens the State’s ability to protect the health, safety, and welfare of all Californians.² The Rate Agreement contemplates that DWR will issue Bonds as soon as possible in amounts that are sufficient to repay the State and the Interim Loan.

In light of the foregoing, this ruling establishes the following expedited schedule for the Commission’s consideration of the proposed Rate Agreement:

- Comments on the Rate Agreement: February 5, 2002
- Proposed decision issued: February 12, 2002
- Electronic Service of Comments
on proposed decision: 3 p.m. February 18,
2002³
- Final decision: February 21, 2002

The previously identified dates for issuing the proposed decision and submitting comments on the proposed decision may be revised, if necessary.

² As more fully described in the comments submitted by Morgan Guarantee Trust Company of New York in this proceeding on September 4, 2001, DWR is required by the terms of the Interim Loan to (i) repay the Interim Loan prior to repaying the State, (ii) repay the Interim Loan in full with Bond proceeds, and (iii) pay higher rates of interest on the Interim Loan the longer the Loan remains outstanding.

³ Parties should file and serve hard copies of comments on the proposed decision on February 19, 2002.

Due to the compressed schedule, parties should serve their comments via e-mail in accordance with the protocols previously established in this proceeding. Parties should also serve Administrative Law judge (ALJ) Kenney by e-mail (tim@cpuc.ca.gov). All comments served on ALJ Kenney should be in Microsoft Word format. In addition, parties should file hard copies of their comments at the Commission's Docket Office in accordance with the Commission's Rules of Practice and Procedure. These rules are accessible on the Commission's website at <http://www.cpus.ca.gov>.

Non-parties with a direct interest in the Rate Agreement (e.g., DWR and the State Treasurer's Office) may submit comments in accordance with the schedule and procedures set forth in this ruling. Any such comments will be entered into the formal record of this proceeding.

IT IS RULED that:

1. The Commission will consider the proposed Rate Agreement in accordance with the schedule set forth in the body of this ruling.
2. Parties may file comments on the proposed Rate Agreement and the forthcoming proposed decision in accordance with the schedule and procedures set forth in the body of this ruling.
3. Non-parties with a direct interest in the Rate Agreement may submit comments in accordance with the schedule and procedures set forth in the body of this ruling. Any such comments shall be entered into the formal record of this proceeding.
4. Electronic copies of comments provided to Administrative Law Judge Kenney (tim@cpuc.ca.gov) must be in Microsoft Word format.

Dated January 31, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

A.00-11-038 et al. TIM/jgo

Timothy Kenney
Administrative Law Judge

Exhibit A

<http://www.cpuc.ca.gov/PUBLISHED/REPORT/12982.htm>

Proposed Rate Agreement

Exhibit B

Summary of Proposed Rate Agreement

Appendix B provides a summary of the proposed Rate Agreement. The purpose of the summary is to simplify and reorganize the provisions of the Rate Agreement to assist the reader in developing an understanding of the Agreement. The summary necessarily excludes many details of the proposed Rate Agreement, and is not meant to be an authoritative interpretation of the Rate Agreement. The summary is not designed to, and cannot, supersede the more precise terms of the Agreement itself.

I. Purpose

The purpose of the proposed Rate Agreement is to facilitate the issuance of Bonds in accordance with the Bond transaction that will be set forth in the Financing Documents. To proposed Rate Agreement describes Bonds and Financing Documents as follows:

Bonds means evidences of indebtedness issued by DWR for the purposes specified in the Act pursuant to Water Code § 80130 and the Governor's Executive Order dated June 18, 2001, in an aggregate principal amount up to \$ 13,423,000,000; provided, however, that (i) notes issued in anticipation of the Bonds and retired from the proceeds of the Bonds shall not be counted against said dollar limitation, (ii) Bonds includes debt issued to refund prior Bonds, but such debt shall not be counted against said dollar limitation; and (iii) Bonds excludes the Interim Loan. (Paraphrase of Section 1.1.)¹

¹ All "section" references refer to the proposed Rate Agreement. Section 1.1 of the Rate Agreement defines the Interim Loan as obligations under the Credit and Security Agreement

Footnote continued on next page

Financing Documents means any resolution, indenture, trust agreement, loan agreement, revolving credit agreement, reimbursement agreement, standby purchase agreement, bond offering documents, or other agreement or instrument adopted or entered into by DWR authorizing, securing or enhancing the Bonds, as amended or supplemented, copies of which shall be provided to the Commission. (Paraphrase of Section 1.1.)

Although DWR is responsible for developing the Financing Documents, DWR must (1) involve the Commission, to the fullest extent possible, in the development and completion of all Financing Documents, and (2) consult with the Commission regarding (i) the sizing of operating and debt service reserves, (ii) debt service coverage, (iii) the maturity and maximum amount of Bonds to be issued, and (iv) any other matters in the Financing Documents which the Commission deems material.² The proposed Rate Agreement also states that DWR “has submitted to the Commission a summary of the material terms of the Financing Documents securing its Bonds.”³ The summary of material terms has not yet been created, and will be provided to the Commission prior to a Commission vote on the proposed Rate Agreement.

The proposed Rate Agreement provides that DWR must obtain approval from the Commission’s designee prior to making any “material changes” to the

dated June 26, 2001. As more fully described in the comments submitted by Morgan Guarantee Trust Company of New York in this proceeding on September 4, 2001, the Interim Loan provided DWR with \$4.3 billion to finance electric power purchases.

² Section 7.10.

³ Section 7.10. The Rate Agreement defines “material terms” as the maximum amount of the Bonds authorized, their maturity, a description of the flow of funds, and a description of the sizing or methodology of sizing of reserves held or created pursuant to the Financing Documents or debt service coverage required thereby. (Section 7.10.)

“material terms.”⁴ The Commission is supposed to appoint a designee at the time it adopts the Rate Agreement. Nothing in the Rate Agreement is meant to imply that the Commission or its designee will have the right to approve (i) the final amortization, interest rates, or methods of determination, denominations, redemption provisions or pricing of the Bonds, (ii) final sizing of reserves and debt service coverage based on pricing considerations, (iii) except to the extent set forth in the previous paragraph, the terms of any revolving credit agreement, reimbursement agreement, standby purchase agreement, liquidity or credit enhancement facility, or swap agreement or other hedging agreement entered into in connection with the Bonds, (iv) any agreements or arrangements with any Fiduciary incident to the issuance of the Bonds, or (v) any offering document used in connection with the offering of the Bonds, except with respect to sections of the offering document relating to the Commission.⁵

II. Revenue Streams

The proposed Rate Agreement establishes two separate streams of revenue. One stream of revenues will come from Bond Charges, which the Rate Agreement describes as follows:

⁴ The Rate Agreement defines “material change” as (i) a change in the sizing or methodology of sizing of debt service reserves that would increase the projected net debt service on the Bonds by more than an amount specified in the summary of the material terms of the Financing Documents, (ii) an increase in debt service coverage required by the Financing Documents by more than an amount specified in the summary of the material terms of the Financing Documents; (iii) a change in the sizing or method of sizing of operating reserves by more than an amount specified in the summary of the material terms of the Financing Documents; (iv) any increase in the maximum amount of the bonds authorized; (v) a change in the maturity of the Bonds beyond those changes permitted in the summary of the material terms of the Financing Documents or (vi) a change in the flow of funds beyond those changes permitted in the summary of the material terms of the Financing Documents.

⁵ Section 7.10.

Bond Charges means charges imposed by the Commission upon customers in the Service Areas of PG&E, SCE, and SDG&E based on the aggregate amount of electric power sold to each customer by an Electrical Corporation, DWR, and, to the extent determined by the Commission under Section 4.3 of the Rate Agreement,⁶ by an Electric Service Provider (ESP),⁷ for the purpose of providing sufficient funds to pay for, or provide for the payment of, Bond-Related Costs as they come due. Bond Charges shall be imposed upon customers at all times required by the Rate Agreement whether or not DWR is selling, or deemed to be selling, Power to such customers until such time as DWR has recovered the portion of its revenue requirements under Water Code § 80134 constituting Bond-Related Costs. (Paraphrase of Section 1.1.)

Revenues from Bond Charges will be used to pay Bond-Related Costs, which Section 1.1 of the Rate Agreement describes, in paraphrased form, as follows:

Bond-Related Costs means payments or deposits or other provisions by DWR pursuant to the Financing Documents or the Act for the following components of DWR's revenue requirement under Water Code § 80134:

- (i) Bond principal, interest, and premium, and any additional amount required under the Financing Documents to be deposited into the Bond Charge Collection Account to provide debt service coverage of the Bonds.

⁶ Section 4.3 states that "Bond Charges may be based on electric power provided to customers by Electric Service Providers only after an order of the Commission providing for such charges becomes final and unappealable."

⁷ Section 1.1 defines an ESP as "an entity that provides electrical service to one or more retail customers located within the Service Areas of [PG&E, SCE, or SDG&E], except that [ESP] excludes: [DWR], any other public agency to the extent that it offers electrical service to customers within its jurisdiction or within the service territory of a local publicly owned electric utility, and Electrical Corporations. [ESP] includes the unregulated affiliates and subsidiaries of an Electrical Corporation."

- (ii) Payments required to be made pursuant to: (1) agreements with issuers of credit and liquidity facilities and their participants, including letters of credit, bond insurance, guarantees, debt service reserve fund surety bonds, lines of credit, reimbursement agreements, and standby bond-purchase agreements; (2) agreements relating to other financial instruments entered into in connection with the Bonds, including investment agreements, hedges, interest-rate swaps, caps, options and forward-purchase agreements; and (3) agreements relating to the remarketing of Bonds, including remarketing agreements, dealer agreements, and auction agent agreements.
- (iii) Deposits to the Debt Service Reserve Account established under the Financing Documents to the extent necessary to provide therein an amount equal to the requirement for such account under the Financing Documents if not otherwise replenished from Power Charges.
- (iv) The cost of Fiduciaries associated with the issuance and administration of the Bonds.
- (v) The following costs incurred by DWR when and if DWR no longer sells Power under the Act and Bonds remain outstanding: (i) Bond Charge servicing costs, (ii) costs to prepare and provide the information and reports required by the Financing Documents, the Rate Agreement, and the Act, and related audit, legal, consulting, and administrative costs, and (iii) costs to comply with arbitrage restrictions and rebate requirements.

Section 5.1(a) of the Rate Agreement requires the Commission to impose Bond Charges that are sufficient to pay all Bond-Related Costs as they come due. The actual Bond Charge for each customer will be based on the aggregate amount of electric power sold to the customer by an Electrical Corporation, DWR, and, under the circumstances described in Section 4.3, by an ESP. Section 5.1(b) states that DWR's right to receive Bond Charges shall be the property of DWR for all purposes under California law. Section 5.1(c)

provides that Sections 5.1(a) and 5.1(b) shall have the force and effect of an irrevocable “financing order” adopted by the Commission pursuant to Pub. Util. Code § 840 et seq. Importantly, only Sections 5.1(a) and 5.1(b), and no others, will have the force and effect of an irrevocable “financing order.”

Revenues from Bond Charges will be deposited into the Bond Charge Collection Account (Collection Account).⁸ Funds in the Collection Account will be transferred periodically to the Bond Charge Payment Account (Payment Account).⁹ Funds in the Payment Account may only be used to pay for Bond-Related Costs. However, so long as funds remain in the Collections account, they may be used, if necessary, to pay for certain Department Costs (defined below) specified in the Financing Documents.¹⁰ If the Collections Account is used to fund Department Costs, then the Collections Account will be replenished from Power Charges (defined below).¹¹ The Debt-Service Reserve Account will be used to pay for Bond-Related Costs in the event there are insufficient funds available in the Payment Account, the Collection Account, or other funds provided for in the Bond Indenture.¹² The Debt Service Reserve Account will be

⁸ Section 1.1. All “accounts” referred herein are part of the Electric Power Fund.

⁹ Section 1.1.

¹⁰ Section 6.4.

¹¹ Section 6.4 states: “In the event that such Department Costs are funded out of the Bond Charge Collection Account, the Department shall take such actions as are required under this Agreement so that the amounts applied from the Bond Charge Collection Account for such purposes shall be replenished from Power Charges, provided that any failure to do so by the Department shall not mitigate or alter the Commission’s obligations under Article V.”

¹² Section 1.1.

funded initially with Bond proceeds, and may be replenished, as appropriate, from Bond Charges and Power Charges.¹³

The second stream of revenues established by the Rate Agreement will come from Power Charges, which the Rate Agreement defines as charges imposed by the Commission on Retail End Use Customers¹⁴ for electric power deemed sold by DWR.¹⁵ Revenues from Power Charges will be used to pay for Department Costs, which the Rate Agreement defines as all amounts that DWR incurs to comply with Water Code § 80134 that DWR is entitled to recover under Water Code § 80110, with the exception of Bond-Related Costs that are recovered through Bond Charges.¹⁶ Section 6.1(a) of the Rate Agreement requires the Commission to impose Power Charges that are sufficient to provide moneys in the amounts and at the times necessary to satisfy the Retail Revenue Requirements (defined below) specified by DWR.¹⁷ Section 6.1(c) provides that Power Charges shall be property of DWR for all purposes under California law.

Revenues from Power Charges will be deposited into the Operating Account. Funds in the Operating Account will be used to pay for Department Costs,¹⁸ and funds also will be transferred to the Priority Contract Account. The

¹³ See Section 1.1, definitions of Debt Service Reserve Account, Bond Charges, and Bond-Related Costs, Item (iii).

¹⁴ The Rate Agreement defines “Retail End Use Customer” as “each customer within the Service Area of an Electrical Corporation that is deemed to purchase electric power from the Department under the Act.” (Section 1.1) “Service Area” is defined as “the geographic area in which an Electrical Corporation distributes electricity.” (Ibid.) “Electrical Corporation” is defined as having “the same meaning ascribed thereto in Section 218 of the Public Utilities Code, including any successor and assign thereof.” (Ibid.)

¹⁵ Section 1.1. The definition of Power Charges does not include Bond charges. (Ibid.)

¹⁶ Section 1.1. Department Costs includes amounts payable under the Interim Loan.

¹⁷ The imposition of Power Charges is independent of Bond Charges and vice versa.

¹⁸ Section 1.1.

Priority Contract Account will be used to pay for the costs that DWR incurs under its Priority Long-Term Power Contracts (PLTPCs).¹⁹ The Operating Reserve Account will be used to pay for Department Costs in the event there are insufficient funds in the Operating Account or the Priority Contract Account.²⁰

III. Establishing Bond Charges and Power Charges

To enable the Commission to set Bond Charges and Power Charges, the proposed Rate Agreement requires DWR to submit its Retail Revenue Requirement to the Commission.²¹ The Rate Agreement defines Retail Revenue Requirement as the amount of Department Costs that must be recovered from Power Charges.²² The Agreement uses DWR's submittal of its Retail Revenue Requirement as a vehicle for DWR to notify the Commission not only about Department Costs, but also about Bond-Related Costs.²³

DWR must review, determine, and revise its Retail Revenue Requirement at least annually, and more frequently as deemed necessary or appropriate by

¹⁹ The costs that DWR incurs under PLTPCs are a subset of Department Costs. Section 1.1 of the Rate Agreement defines PLTPCs as (1) those long-term electric power contracts identified in Appendix A of the Agreement that were entered into prior to August 15, 2001, and (2) any contracts entered into for the purpose of securing fuel for use at generating facilities being operated pursuant to such PLTPCs. Sections 1.1 also states that DWR shall consult with the Commission prior to entering into any additional contract for the purpose of securing fuel if that contract contains a provision for the payment of costs thereunder prior to debt service on the Bonds. In addition, Section 1.1 states that DWR shall consult with the Commission prior to entering into any additional contract for the purpose of securing fuel of that contract contains a provision for the payment of costs thereunder prior to debt service on the Bonds. Sections 1.1 and 7.8 provide that a contract will cease to be treated as a PLTPC when the contract no longer contains a provision to the general effect that payments by DWR under the contract are to paid or payable prior to that DWR debt which is secured by a pledge or assignment of DWR's revenues under the Act and other amounts in the Electric Power Fund.

²⁰ Section 1.1.

²¹ Section 4.1.

²² Section 1.1.

either DWR or the Commission.²⁴ DWR must also revise its Retail Revenue Requirement if it projects that any of the following will occur within 120 days: (1) there will be insufficient funds in the Priority Contact Account to pay amounts due under the PLTPCs; (2) the balance in the Operating Reserve Account will fall below that required by the Financing Documents; (3) it will be necessary to use funds in the Bond Charge Collection Account to pay for costs incurred by DWR under the PLTPCs; or (4) it will be necessary to use funds in the Debt Service Reserve Account to pay Bond-Related Costs. DWR must also revise its Retail Revenue Requirement, if it has not already done so, no later than three business days after (1) DWR makes a withdrawal from the Bond Charge Collection Account to pay for Department Costs, or (2) the balance in the Operating Reserve Account or the Debt Service Reserve Account falls below that required by the Financing Documents.²⁵

In determining its Retail Revenue Requirement, the proposed Rate Agreement requires DWR to take into account any deficiency or surplus in the amounts recovered in earlier periods, as well as any anticipated surpluses.²⁶ In addition, DWR may include in its Retail Revenue Requirement only those costs that DWR is permitted to collect under the Act.²⁷

Each time DWR determines or revises its Retail Revenue Requirement, it must submit the Revenue Requirement to the Commission.²⁸ DWR may also

²³ Section 4.1.

²⁴ Sections 4.1(b) and 7.3(a).

²⁵ Section 4.1(b).

²⁶ Section 4.1(c).

²⁷ Section 7.1.

²⁸ Section 4.1(a).

submit a separate request to increase Bond Charges under the circumstances described in Section 5.1(d). Prior to any submittal, DWR must conduct whatever procedures are required by law to determine that the amounts included in the Retail Revenue Requirement communicated to the Commission are just and reasonable within the meaning of Pub. Util. Code § 451.²⁹

After DWR submits its Retail Revenue Requirement and/or a request to increase Bond Charges, the Commission must revise Power Charges and Bond Charges, as necessary, to provide sufficient revenues to pay for Department Costs and Bond-Related Costs as they come due.³⁰ In the event DWR fails to submit a revised Retail Revenue Requirement within the previously specified time frames, and the Commission believes that Power Charges are not sufficient to pay Department Costs, the Commission may revise Power Charges on an interim basis to cover the shortfall pending DWR's submittal of a revised Revenue Requirement.³¹

The proposed Rate Agreement requires the Commission to impose revised Bond Charges and/or Power Charges, as appropriate and necessary, no later than 120 days following the submittal of DWR's Retail Revenue Requirement and/or request to increase Bond Charges.³² In addition, the Commission must establish Power Charges and Bond Charges without regard to rates or charges

²⁹ Section 4.2.

³⁰ Sections 4.1(a), 5.1(a), 5.1(d), 6.1(a), and 6.1(d). The proposed Rate Agreement recognizes that the Commission has exclusive authority to allocate DWR's revenue requirement among customer classes and service territories, and to determine the extent and timing of any rate changes that may be necessary to recover Department Costs and/or Bond-Related Costs. (Section 7.4)

³¹ Section 4.1(a).

³² Sections 5.1(d) and 6.1(d).

for electric power sold by Electrical Corporations.³³ The Rate Agreement recognizes that the Commission has exclusive authority to spread DWR's revenue requirement among customer classes and service territories, and to determine the extent and timing of rate changes, consistent with the Commission's obligations under the Rate Agreement.

So that the Commission has an adequate record to establish and revise Power Charges and Bond Charges, the Rate Agreement requires DWR, at the request of the Commission, to participate in Commission proceedings. Such participation may include providing witnesses, attending public hearings, and submitting information and documents.³⁴ DWR must also submit with any Retail Revenue Requirement a projection that contains the following information for each month covered by the Revenue Requirement:³⁵

- i. The beginning balance of funds in the Electric Power Fund, including the amounts on deposit in each account and subaccount of the Fund.
- ii. The amounts necessary to pay or provide for all Bond-Related Costs under the Financing Documents, when payments are due, and the amount of the Bond Charges that must be collected for such purpose.
- iii. The amount of its Retail Revenue Requirement for each month.
- iv. Any other information requested by the Commission in its proceedings implementing a Retail Revenue Requirement.

In addition to the above information, DWR must provide the Commission with (1) a copy of DWR's annual audit of the Electric Power Fund and any audit

³³ Section 6.1(b).

³⁴ Section 7.2.

³⁵ Section 4.1(c).

conducted pursuant to Water Code § 80270,³⁶ (2) any financial reports prepared by DWR pursuant to the Financing Documents,³⁷ and (3) a monthly report of costs and revenues presented in a form that enables reasonable comparison to the monthly estimates contained in the latest Retail Revenue Requirement.³⁸

IV. Issuance of the Bond and Use of Bond Proceeds

The proposed Rate Agreement contemplates that DWR will sell Bonds as soon as practicable in amounts sufficient to repay the State for advances made under the Act, together with interest on such advances as provided by the Act. The Agreement also contemplates that DWR will use the Bond proceeds to repay the General Fund with the understanding that repayment of the Interim Loan has priority, and that the following costs may have priority also: creation of adequate reserves for Bond-Related Costs and payment of Bond-issuance costs.³⁹

V. Protection of Bondholder Interests

The Rate Agreement contains several provisions that are designed to protect bondholders. First, the Agreement requires both the Commission and DWR to comply with the Act and the Rate Agreement.⁴⁰ Second, the Agreement requires both agencies to act, as necessary, to protect the tax-exempt status of the Bonds.⁴¹ Third, the Commission may not allow, to the extent it has the authority to do so, any lien on Power Charges or Bond Charges except for liens created

³⁶ Section 7.5.

³⁷ Section 4.2(e).

³⁸ Section 4.1(d).

³⁹ Section 7.6.

⁴⁰ Sections 6.2(a) and 7.3(a).

⁴¹ Sections 6.2(b) and 7.3(b).

pursuant to the Act.⁴² Fourth, if either party breaches the Agreement, and the breach is not cured within 30 days of receiving written notice, the aggrieved party may take whatever action at law or in equity that it deems necessary to enforce performance.⁴³ Finally, DWR may assign to a Trustee the Commission's obligation under the Rate Agreement to impose Bond Charges that are sufficient to pay Bond-Related Costs when due.⁴⁴ The Trustee may enforce this obligation only after DWR has both defaulted on its obligations contained in the Financing Documents and has failed to enforce the Commission's obligations in accordance with the Agreement. Prior to exercising its rights, the Trustee must (i) give 30-day's written notice,⁴⁵ (ii) certify to the Commission that an event of default has occurred under the Financing Documents that is not predicated solely on the Commission's failure to act as required by the Rate Agreement, and (iii) comply or cause DWR to comply with the provisions in the Rate Agreement pertaining to DWR's rights, duties, and obligations.⁴⁶

VI. Power Contracts

The proposed Rate Agreement requires DWR to use its best efforts to renegotiate its long-term power contracts.⁴⁷ The Rate Agreement does not limit the ability of the Commission or DWR to assert any right that it might have regarding contracts entered into by DWR pursuant to the Act. Nor does the Rate

⁴² Section 6.3.

⁴³ Section 8.2(b).

⁴⁴ Section 8.3(a).

⁴⁵ The Trustee may provide less than 30-day's notice if a default has resulted in the amount in the Debt Service Reserve Account being insufficient to timely pay all Bond-Related Costs. (Section 8.3(b).)

⁴⁶ Section 8.3(a).

⁴⁷ Section 7.7.

Agreement limit the Commission's right to contest in any venue the legality or effect of any contract entered into by DWR under the Act.⁴⁸

VII. Irrevocable Financing Order

Sections 5.1(a) and 5.1(b) of the proposed Rate Agreement will have the force and effect of an irrevocable "financing order" adopted by the Commission pursuant to Pub. Util. Code § 840 et seq.⁴⁹ There are no other provisions in the Rate Agreement that will have the force and effect of an irrevocable "financing order."

VIII. Applicability, Amendments, Termination, and Assignment

The proposed Rate Agreement applies only to the Retail Revenue Requirements that DWR submits to the Commission after the two parties sign the Agreement.⁵⁰ Once in effect, the Agreement may be amended upon the written consent of both the Commission and DWR,⁵¹ except for Sections 5.1(a) and 5.1(b) which will have the force and effect of an irrevocable "financing order." The Agreement terminates when the Bonds have been retired and all other Bond-Related Costs have been paid or provided for in accordance with the Financing Documents.⁵²

Except as set forth in Section 8.3, neither the Commission nor DWR may assign any of its rights or delegate any of its duties under the Rate Agreement without the express written consent of the other party. However, if another governmental entity is designated by law to carry out the rights, powers, duties,

⁴⁸ Section 11.10.

⁴⁹ Section 5.1(c).

⁵⁰ Section 11.9.

⁵¹ Section 10.1.

⁵² Section 9.1.

and obligations of the Commission and/or DWR, then the Commission and DWR may, if required by such law, transfer and assign its rights, title, and interest in the Rate Agreement to such successor.⁵³

(END OF EXHIBIT B)

⁵³ Section 11.11.

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judges' Ruling Establishing a Schedule for Consideration of the Proposed Rate Agreement Between the Commission and the California Department of Water Resources on all parties of record in this proceeding or their attorneys of record.

Dated January 31, 2002, at San Francisco, California.

/s/ JACQUELINE GORZUCH

Jacqueline Gorzuch

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.